

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
)
 Opinion requested by:)
 Don P. Bonfa,)
 City Attorney,)
 Huntington Beach)
 _____)

No. 76-033
 Oct. 5, 1976

BY THE COMMISSION: We have been asked the following question by Don P. Bonfa, City Attorney of Huntington Beach:

Are members of a Project Area Committee formed pursuant to Health and Safety Code Section 33385, et seq., public officials who are subject to the provisions of Government Code Section 87100, et seq.; and if so, are they prevented by reason of a conflict of interest from participating in decisions of the Redevelopment Agency regarding planning matters concerning residential facilities, replacement housing, and other issues which affect the residents of the project area?

CONCLUSION

Members of a Project Area Committee are not "public officials" within the meaning of Government Code Section 87100.

ANALYSIS

Pursuant to the provisions of the Community Redevelopment Law of the State of California, Health and Safety Code Section 33000, et seq., the City Council of the City of Huntington Beach has appointed a Project Area Committee (hereinafter "PAC"). Health and Safety Code Sections 33385 and 33386 provide:

The legislative body of a city or county shall call upon the residents and existing community organizations in a redevelopment project area, within which a substantial number of low- and moderate-income families are to be displaced by the redevelopment project, to form a project area committee. The project area committee shall include, when applicable, residential owner occupants, residential tenants, businessmen, and members of existing organizations within the project area. The members of the committee shall serve without compensation.

The legislative body shall approve a representative project area committee in each project area within 60 days after the project area is selected.

For project areas selected prior to March 7, 1973, the legislative body may, but shall not be required to, call upon the residents and existing community organizations to form a project area committee.

If the project will not displace a substantial number of low- and moderate-income families the agency shall either call upon the residents and existing community organizations to form a project area committee or the agency shall consult with, and obtain the advice of, residents and community organizations as provided for project area committees in Section 33386 and provide such persons and organizations with the redevelopment plan prior to submitting it to the legislative body.

Nothing contained in this section shall prevent an agency, or the legislative body of any city or county, from creating any other committee for a project area.

Health and Safety Code
Section 33385

The redevelopment agency through its staff, consultants, and agency members shall, upon

the direction of and approval of the legislative body consult with, and obtain the advice of, the project area committee concerning those policy matters which deal with the planning and provision of residential facilities or replacement housing for those to be displaced by project activities. The agency shall also consult with the committee on other policy matters which affect the residents of the project area. The provisions of this section shall apply throughout the period of preparation of the redevelopment plan and for a three-year period after the adoption of the redevelopment plan, subject to one-year extensions by the legislative body.

Health and Safety Code
Section 33386

Government Code Section 87100^{1/} provides that:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Initially, we must determine whether the members of a PAC are "public officials" within the meaning of the Political Reform Act. Section 82048 defines "public official" as "every member, officer, employee or consultant of a state or local government agency." Local government agency, in turn, means:

... a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of these, but does not include any court or any agency in the judicial branch of government.

Section 82041

^{1/} All statutory references are to the Government Code unless otherwise noted.

Individuals who serve on a PAC could be "public officials" on the basis of their affiliation with the PAC only by reason of their status as "members," since it is clear that they do not serve as officers, employees or consultants of the PAC within the meaning of the Political Reform Act. In determining whether such individuals are members, our regulation defining "member," 2 Cal. Adm. Code Section 18700(a)(1), is determinative. This regulation provides that:

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Health and Safety Code Section 33363, in describing the procedures and activities to be followed in adopting a redevelopment plan, provides that:

At the hour set in the notice required by Section 33361 for hearing objections, the legislative body shall proceed to hear and pass upon all written and oral objections. Before adopting the redevelopment plan the legislative body shall consider the report of the agency, the report and recommendation of the project area committee, and all evidence and testimony for and against the adoption of the plan.

Thus, a redevelopment agency may not adopt a plan until it has been submitted to the PAC and consideration has been given to the recommendations of the PAC. However, the PAC's recommendations are not binding on the redevelopment agency, which is free to adopt some, all, or none of the recommendations at its discretion. Moreover, if the redevelopment agency refuses to approve the recommendations of the PAC, this action cannot be appealed to any governmental agency or judicial body, or otherwise reviewed.

We think that under these circumstances it is clear that a PAC does not make final governmental decisions, does not have the power to compel governmental decisions, and cannot prevent such decisions within the meaning of 2 Cal. Adm. Code Section 18700(a)(1). Accordingly, we conclude that a PAC does not have "decision-making authority" within the meaning of the regulation and that its members, therefore, are not "public officials" by reason of their affiliation with the PAC.^{2/}

In light of this conclusion, it is unnecessary to analyze the second half of the question posed by the opinion request.^{3/}

Approved by the Commission on October 5, 1976.
Concurring: Brosnahan, Carpenter, Lapan, Lowenstein and Quinn.


Daniel H. Lowenstein
Chairman

^{2/} Whether the PAC "makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment," and hence has decision-making authority, depends on the facts of each particular case. We have been provided with no facts which suggest that this occurs in the present case.

^{3/} We also observe that in light of our conclusion herein that PAC's are advisory bodies without "decision-making authority," we think it is clear that their members cannot "make or participate in the making of decisions which may foreseeably have a material effect on any financial interest." Section 87302(a). Accordingly, PAC's need not develop Conflict of Interest Codes, and their members should not be deemed to be "designated employees" under any Code. This conclusion is buttressed by Section 82019 which, in defining "designated employee," specifically provides that "'designated employee' does not include ... any unsalaried member of any board or commission which serves a solely advisory function."